

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PAUL PHELPS,

Plaintiff,

v.

PEREZ, *et al.*,

Defendants.

No. 1:21-cv-01108-JLT-BAM (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS TO DISMISS  
ACTION, WITHOUT PREJUDICE, FOR  
FAILURE TO OBEY COURT ORDER  
AND FAILURE TO PROSECUTE**

(Doc. 35)

Plaintiff Paul Phelps is a former pretrial detainee proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 2, 2022, the assigned magistrate judge issued a writ of habeas corpus ad testificandum directing the production of Plaintiff for a video settlement conference on May 31, 2022. (Doc. 30.) On May 10, 2022, Defendants submitted a response indicating that the Madera County Jail, where Plaintiff was previously housed, recently released Plaintiff on County Parole and Plaintiff was no longer in custody. (Doc. 32.) Based on this information, the magistrate judge vacated the video settlement conference and the transportation writ for Plaintiff and issued an order directing Plaintiff to submit a notice of change of address within thirty days. (Doc. 33.) Plaintiff was warned that failure to comply with the Court's order would result in a recommendation of dismissal of this action, without prejudice, for failure to prosecute and failure

1 to obey a court order. (*Id.* at 2.) On May 18, 2022, the writ of habeas corpus ad testificandum was  
2 returned as “Undeliverable, RTS, Not in Custody.” On May 25, 2022, the Court’s order directing  
3 Plaintiff to update his address was returned as “Undeliverable, Not in Custody.” Plaintiff did not  
4 file a notice of change of address or otherwise communicate with the Court.

5 Therefore, on June 30, 2022, the magistrate judge issued findings and recommendations  
6 recommending dismissal of this action, without prejudice, for failure to obey a court order and  
7 failure to prosecute this action. (Doc. 35.) Those findings and recommendations were served on  
8 Plaintiff and contained notice that any objections thereto were to be filed within fourteen days  
9 after service. (*Id.* at 4.) The findings and recommendations were “Returned as Not in Custody” on  
10 July 18, 2022. Plaintiff has not communicated with the Court, no objections have been filed, and  
11 the deadline to do so has now passed.

12 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a  
13 *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes that the  
14 magistrate judge’s findings and recommendations are supported by the record and by proper  
15 analysis.

16 Based on the foregoing, the Court **ORDERS**:

- 17 1. The findings and recommendations issued on June 30, 2022, (Doc. 35), are  
18 **ADOPTED IN FULL.**
- 19 2. This action is **DISMISSED**, without prejudice, due to Plaintiff’s failure to obey a  
20 court order and failure to prosecute; and
- 21 3. The Clerk of the Court is directed to terminate all pending motions and close this  
22 case.

23  
24 IT IS SO ORDERED.

25 Dated: **July 28, 2022**

  
UNITED STATES DISTRICT JUDGE